

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8517 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KANUBHA KHETAJI DARBAR

Versus

DIST.MAGISTRATE

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Appearance:

MS DR KACHHAVAH for Petitioner

MR UA TRIVEDI, AGP for Respondent No. 1, 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 16/12/96

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the impugned order of detention dated 15/10/1996 on number of grounds. However, Miss Banna Dutta for the petitioner has pressed to service the ground that, in the order of detention dated 15/10/96, it is specifically stated that the petitioner is required to be detained for a period of one year. This statement is contrary to the scheme of the Gujarat Prevention of Anti

Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act, 1985". She has also placed reliance in a decision of the Division Bench of this Court in case of Pravin Mahipatra Mehta v. District Magistrate 1991(1) GCD 671.

2. Having heard the learned counsel for the petitioner and the ld. AGP, in view of the binding decision of this Court referred to above, this Special Civil Application deserves to be allowed. The Division Bench in the aforesaid case has, after considering the Scheme of the Act and relying on the decision of the Apex Court reported in AIR 1952 SC 27 and some other authorities, held that the detaining authority has usurped the powers of the Government and the Advisory Board as per the scheme mentioned in the provisions of the PASA Act, which makes the order of detention contrary to the provisions of mandate expressed under Article 24 of the Constitution of India.

3. Thus, following the decision of the Division Bench of this Court, the impugned order of detention is bad, illegal, invalid and as such, required to be quashed and set aside.

4. In view of the aforesaid, this Special Civil Application is allowed. The impugned order of detention is quashed and set aside. The petitioner - detenue shall be released forthwith, if he is not required in any other case. Rule is made absolute accordingly.

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